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OPINION RENDERED: SEPTEMBER 4, 1981; 200 P.M.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 80-CA-230-MR

M. R. YUDOFSKY & ASSOCIATES
A Kentucky Partnership - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF FINANCE,
CLIFFORD A. HARROD, D/B/A
DECANTER BAR,
RUDY F. BOUTEILLER and
LOUELLA PERSON - - - - - - - *Appellees*

Appeal from Jefferson Circuit Court
Honorable Richard A. Revell, Judge
Action No. 79-CI-01265

AND: **No. 81-CA-537-MR**

MORRIS R. YUDOFSKY & ASSOCIATES,
A Kentucky Partnership - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF FINANCE - - - - *Appellee*

Appeal from Jefferson Circuit Court
Honorable Olga S. Peers, Judge
Action No. 79-CI-01270

AFFIRMING

BEFORE: GANT, GUDGEL and REYNOLDS, Judges.

GANT, JUDGE. This was an action by the Commonwealth of Kentucky, Department of Finance, seeking to acquire property including property of the appellant pursuant to the condemnation statutes, for the purpose of constructing a parking garage in Louisville, to be used in conjunction with the Commonwealth Convention Center and a state office building. Appellants contend that their property is not being taken for public purpose, nor is the area blighted or deteriorated. After a three-day trial, numerous exhibits, exhaustive but not exhausting depositions, the lower court entered its interlocutory judgment herein, granting the Commonwealth its right to immediate possession. This judgment was ruled appealable by the Supreme Court of Kentucky and we turn now to the merits of the case.

The thrust of the argument of the appellant is that the exercise of the power of condemnation in this case was arbitrary and made in bad faith. This is predicated upon an alleged scheme between Al J. Schneider and Honorable Julian Carroll, then governor of the Commonwealth, which scheme appellant contends had the effect of allowing Mr. Schneider to select the site for the proposed garage. The evidence herein discloses that Mr. Schneider was planning to construct an apartment building at the corner of Sixth and Main Streets. Officials of state and local governments had long felt that lack of parking and insufficient hotel rooms were a deterrent to adequate and profitable use of the Convention Center, which was far from a thriving operation. Several meetings were held between the governor, Mr. Schneider, the mayor, various planners and others, to discuss the general plans for and construction in a large area of downtown Louisville. Included in these plans was the construction of a pedway, an enclosed walk-

way, which would connect various buildings and facilities over a large area, extending some five or six blocks in the north and south direction and laterally to other facilities, including the parking garage in this labyrinth. As a result of several discussions, some of which were between the governor and his people and Mr. Schneider, the latter, who operates the Galt House, a large hotel which would be connected by the pedway, agreed to alter his plans to construct an apartment complex at Sixth and Main to construct a hotel at Fourth and Main. This change was made contingent upon a commitment by the state that it would construct its parking garage at Fourth and Market.

After conclusion of the hearing and consideration of the exhibits and evidence previously described, the lower court made its findings of fact, which included:

1. The site selected for the proposed garage, at the northeast corner of Fourth and Market Streets, was not dictated or determined by Mr. Al J. Schneider but was made by the proper state officials in the ordinary course of their duties. Mr. Schneider may have given advice to the Governor or other government officials when so requested but he did not initiate the location for the garage nor was there anything sinister, illegal or improper in the discussion between the Governor and Mr. Schneider, and the state's ultimate determination to construct the parking garage at said site.

2. The site selected for the proposed garage was not made arbitrarily, capriciously, in bad faith, for the direct private gain of any government official nor was said site selected by the Commonwealth with a total disregard for all relevant factors.

3. The proposed parking garage will be constructed and operated by the Commonwealth of Kentucky under the auspices of the State Fair Board for the primary

benefit of the Commonwealth Convention Center and amounts to a valid public use.

The Court is bound by the findings of the lower court unless they are clearly erroneous. CR 52.01. *Allen* v. *Arnett*, Ky., 525 S. W. 2d 748 (1975). After examining the evidence herein and considering the excellent, interesting and entertaining arguments of the appellant, we cannot find that the lower court was clearly erroneous. Consultation between private enterprise and government, to effect a plan for the common good, is not evil, per se, and should be encouraged as long as there is no abuse.

It seems obvious that a parking garage to serve state-owned facilities as well as the general public is, indeed, a public use. *Miller* v. *City of Georgetown*, Ky., 191 S. W. 2d 403 (1945). Nor is it fatal that some property will benefit more than others. *Sturgill* v. *Commonwealth, Department of Highways*, Ky., 384 S. W. 2d 89 (1964).

The judgment in 80-CA-230-MR is affirmed. Because of this affirmation and the unpublished opinion of the Supreme Court of Kentucky in this case, the judgment in 81-CA-537-MR is also affirmed.

ALL CONCUR.

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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 80-CA-230-MR

M. R. YUDOFSKY & ASSOCIATES
A Kentucky Partnership - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY,
Department of Finance; et al. - - *Appellees*

Appeal from Jefferson Circuit Court
Honorable Richard A. Revell, Judge
Action No. 79-CI-01265

AND **No. 81-CA-537-MR**

MORRIS R. YUDOFSKY & ASSOCIATES,
a Kentucky Partnership - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY,
Department of Finance - - - - *Appellee*

ORDER DENYING PETITION FOR REHEARING

BEFORE: GANT, GUDGEL and REYNOLDS, Judges.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is DENIED.

ENTERED: NOVEMBER 25, 1981

(s) Charles H. Reynolds
Judge, Court of Appeals

SUPREME COURT OF KENTUCKY

81-SC-899-D
(80-CA-230-MR & 81-CA-537-MR)

M. R. YUDOFSKY & ASSOCIATES, ETC., A KENTUCKY CORPORATION - - - - - - - *Movants*

v.

COMMONWEALTH OF KENTUCKY, DEPARTMENT OF FINANCE;
CLIFFORD A. HARROD, d/b/a DECANTER BAR;
RUDY F. BOUTEILLER and
LOUELLA PERSON - - - - - *Respondents*

Jefferson Circuit Court
#79-CI-01265 & #79-CI-01270

ORDER DENYING MOTION FOR DISCRETIONARY REVIEW

The motion of M. R. Yudofsky & Associates, Etc., A Kentucky Corporation for a review of the decision of the Court of Appeals is denied.

ENTERED March 2, 1982.

(s) John S. Palmore
Chief Justice

JEFFERSON CIRCUIT COURT

DIVISION FOUR (4)

No. 79CI01265

COMMONWEALTH OF KENTUCKY, DEPARTMENT OF FINANCE - - - - - - - *Plaintiff*

v.

MORRIS R. YUDOFSKY AND ASSOCIATES, Et Al. - *Defendant*

FINDINGS OF FACT AND CONCLUSIONS OF LAW — Filed December 10, 1979

FINDINGS OF FACT

The Commonwealth of Kentucky, Department of Finance filed this action seeking to acquire the defendants' property by condemnation said land being sought for the use and benefit of the Kentucky State Fair Board for the purpose of developing and maintaining a parking garage near to the new Commonwealth Convention Center. The defendant Morris R. Yudofsky and Associates, a partnership, filed its answer denying that the condemnation of its property was for a public use or in the public interest, necessity and convenience and further that the taking of said property was arbitrary and capricious, or in bad faith or an abuse of discretion. The defendant Rudy J. Bouteiller filed his answer which does not contest the right of the Commonwealth to take the land in question. The third defendant Clifford A. Harrod filed an entry of appearance.

The Commonwealth then filed a motion for the entry of an interlocutory judgment granting it the right of immediate possession, and following numerous hearings during the course of the summer and early fall involving such matters as the right of the defendant Yudofsky to take the deposi-

tion of Governor Julian Carroll, the propriety of said defendant taking the deposition of Al J. Schneider, a Louisville developer, all of which the court permitted, the case ultimately came on for trial before the court sitting without a jury upon the issue of the right of the State to take the public property. The trial consumed nearly three days and resulted in the filing of over forty exhibits. From the voluminous evidence presented the court makes the following findings.

The redevelpment of Downtown Louisville has been a matter of great concern for many years involving the time and energy of numerous City, County and State officials in conjunction with the private business sector operating in Downtown, and organizations such as the Louisville Chamber of Commerce, Louisville Central Area Inc., the Governor's Advisory Council, and other organizations. The primary target area of the governmental officials of the City and County was Fourth Street, from Broadway extending north to the River front, upon the theory that the redevelopment of the core of the City should ultimately result in the resurgence of surrounding areas and a revitalization of all Downtown Louisville. In 1970 the Kentucky General Assembly in KRS Chapter 107 enacted legislation enabling the City of Louisville to reconstruct Fourth Street from Broadway to Market Street as a pedestrian mall with financing to be borne by those properties affected and in 1971 the Louisville Board of Aldermen following a series of public hearings proceeded with legislation to accomplish said result between Broadway and Liberty Street in Action No. 155454 styled *The City of Louisville and Louisville Central Area Inc.* v. *The Starks Building Company.* This court wrestled with the constitutionality and propriety of said legislation, ultimately upholding it in all but one provision, and the Fourth Street Mall was thereafter constructed by Al J. Schneider & Associates Inc.

In the same time span various plans were being bantered about for redevelopment of the area generally referred to as the Riverfront; and the several remaining blocks between the northern termination of the Fourth Street Mall at Liberty Street and the Riverfront property, which is generally regarded as between Main Street and the Ohio River, and between generally Third Street and Sixth Street. The name Shippingport has been used generally to describe part or all of the Riverfront area, but apparently has no specifically defined boundaries. The redevelopment of the Riverfront properties lay dormant for several years, with the exception of the construction of the Galt House Hotel by Home Supply Company Inc. of which Al J. Schneider is president, and the Louisville Trust Building constructed by the Louisville Trust Bank, and a Belvedere which runs to and extends out over the river. The redevelopment of the area along Fourth Street between Liberty and Main likewise lay dormant with the general exception of construction of the First National Tower by the First National Bank and the remodeling of Greater Louisville First Federal Savings and Loan Association building, neither of which is actually on Fourth Street, but are within a half block or so of Fourth Street. The Commonwealth of Kentucky, sensitive to the plight of Downtown Louisville and in an effort to participate in the efforts to revitalize the downtown area eventually constructed a convention center known as the Commonwealth Convention Center in the block between Jefferson and Market Streets, facing on Fourth Street. And, a new hotel, the Hyatt Regency, was constructed between Liberty and Jefferson between Third and Fourth Streets.

Mr. Al J. Schneider had obtained, in addition to the tract upon which the Galt House was built, a tract of land at Sixth and Main Streets upon which he contemplated constructing a high rise apartment building. In 1976, Gov-

ernor Julian Carroll, apparently because of Mr. Schneider's reputation for undertaking projects in the Downtown area while other developers took a more cautious approach, requested and obtained a meeting in Louisville with Mr. Schneider, during which the Governor requested Mr. Schneider to switch his building plans from Sixth and Main to Fourth and Main Streets, and from an apartment building to a hotel. In the course of their conversation during lunch the Governor requested Mr. Schneider's view regarding the near failure of the Commonwealth Convention Center to which Mr. Schneider replied that the obvious reason was a lack of adequate parking. There is a considerable conflict in the testimony as to what then occurred. The defendant Yudofsky contends that Mr. Schneider in effect prevailed upon the Governor to build a parking garage at the northeast corner of Fourth and Market Streets (on property owned by the defendants herein) with a pedway connecting the parking garage with the new proposel hotel to be constructed by Mr. Schneider at Fourth and Main. Mr. Schneider's position, and the position of the Commonwealth, is that the Governor proposed the parking garage and pedway, and that Mr. Schneider simply agreed to build the new hotel upon that understanding. The court is inclined to accept the Commonwealth's position, because there is considerable proof that a parking garage had long been proposed somewhere within the perimeters of the block between Third, Fourth, Market and Main, and a pedway had been proposed connecting many of the new buildings, including the new First National Tower, and the Greater Louisville First Federal Building with the Commonwealth Convention Center so that their parking facilities could be utilized by patrons of the Convention Center, it being apparent that no one parking facility would be sufficient to accommodate a capacity crowd attending the Convention Center. In fact, the pedway has been proposed

to extend all the way down Fourth Street to Stewart's, located at Fourth and Walnut Streets some several blocks away. The purpose of the pedway, which is nothing more than an enclosed walkway above the streets, is for pedestrian safety and to insulate those using the pedway from the elements, as an additional encouragement for people to again utilize Downtown facilities.

The plans for the proposed parking garage were drawn up by architects employed by the Commonwealth, and after the various reviews attendant to a facility of this magnitude were eventually adopted, and the project was placed under the jurisdiction of the State Fair Board, which ultimately submitted to the General Assembly and obtained a bond issue for $22½ million of which 8½ million was earmarked for the construction of the proposed parking garage and a proposed state office building to be used to house agencies or individuals whose purpose would be the promotion of the use of the Commonwealth Convention Center and secondly the stimulation of Downtown Louisville. The state office building was originally envisioned at around 60,000 square feet but through changes and additions has now been enlarged to approximately 98,000 square feet, at a proposed cost in excess of the original estimates. The State Fair Board at a meeting duly held concluded that the purpose of the new proposed state office building was not within the general purposes of the State Fair Board and disclaimed jurisdiction of said project. However, the Fair Board took no such action in regard to the proposed parking garage, being of the opinion that such facility is in keeping with the functions of its agency and it therefore intends to construct and operate the parking garage around which this controversy centers.

Considerable testimony was presented regarding the feasibility of the site selected by the State for the proposed parking garage, the Commonwealth's testimony supporting

the position that the site selected is the best location; the defendant's proof being that better alternate sites are available. With all due respect to the defendant's opinion that better sites are available the court is not convinced that the site selected by the Commonwealth for the proposed parking garage is totally without merit or was made arbitrarily or capriciously.

Additionally and more specifically the court finds:

1. The site selected for the proposed garage, at the northeast corner of Fourth and Market Streets, was not dictated or determined by Mr. Al J. Schneider but was made by the proper State officials in the ordinary course of their duties. Mr. Schneider may have given advice to the Governor or other governmental officials when so requested but he did not initiate the location for the garage nor was there anything sinister, illegal or improper in the discussion between the Governor and Mr. Schneider and the State's ultimate determination to construct the parking garage at said site.

2. The site selected for the proposed garage was not made arbitrarily, capriciously in bad faith, for the direct private gain any governmental official nor was said site selected by the Commonwealth with a total disregard for all relevant factors.

3. The proposed parking garage will be constructed and operated by the Commonwealth of Kentucky under the auspices of the State Fair Board for the primary benefit of the Commonwealth Convention Center and amounts to a valid public use.

4. The proposed parking garage remains within the original proposals as to purpose and use unhindered by whatever action is ultimately taken in regard to the proposed state office building.

CONCLUSIONS OF LAW

The defendant raised three issues, essentially

(1) That Al Schneider and not the State made the selection for the site of the proposed parking garage for Schneider's benefit.

(2) That the selection of the site was arbitrary, capricious, and not in good faith, and

(3) That the taking is not within the purpose of the State Fair Board nor within the property allotment enacted for said project.

The first two issues can be discussed together. It appears to the court that the proposal that Mr. Schneider switch building sites was initiated by the Governor in a good faith attempt to get things moving on the Riverfront development. Obviously, Mr. Schneider is a good enough businessman, and the court is not foolish enough to believe that Mr. Schneider did not make inquiries into the State's plans when the Governor requested that he (Schneider) build a hotel at Fourth and Main. The hotel would be in direct competition with Mr. Schneider's other hotel, The Galt House, and it would take an uncautious businessman to rush in and build a second hotel without some assurances as to ultimate plans for the area. But assuming for the sake of argument that Mr. Schneider did agree to build a new hotel at Fourth and Main only if the State would construct a parking garage at Fourth and Market, this fact would not invalidate the right of the Commonwealth to acquire the defendant's property by eminent domain. Granted a private person cannot condemn his neighbor's property for some excessively private or personal use nor may the Commonwealth do for a private person and for a private business what said person may not do for himself. See *Sturgill* v. *Commonwealth, Department of Highways*, Ky., 384 S. W. 2d 89 (1964).

However the fact that a private person gains by virtue of a public project does not invalidate the Commonwealth's right to take. As stated in Sturgill:

> "Any public way naturally confers a special benefit on those persons whose property adjoins it. All roads terminate somewhere. Dead end streets or highways inevitably and particularly subserve the private interests of the last property owner on the line. Yet the public has an interest in reaching other members thereof. As a practical matter, the right of condemnation for highway purposes could not be made to depend upon the predominance of the public interest over private benefit. This is too fine a line even for legal draftsmanship. If this consideration were a determining factor, the condemnor would endlessly be forced to 'battle in every county courthouse.' See *Commonwealth Dept. of Highways* v. *Burchett*, Ky., 367 S. W. 2d 262, 266. The accepted test is whether the roadway is under the control of public authorities and is open to public use, without regard to private interest or advantage."

An even stronger case against the defendants' position is *Baxter* v. *City of Louisville*, 224 Ky. 604, 6 S. W. 1074 (1928) wherein the City of Louisville sought to condemn (ironically) property on the Riverfront for the purpose of constructing a wharf which it intended to lease out to private businesses with the expectation of attracting new industry to the City of Louisville. The appellate court upheld the City's right to take, stating:

> "The expediency of constructing a particular public improvement and the extent of the public necessity therefor are clearly not judicial questions; but it is obvious that if property is taken in the ostensible be-

half of a public improvement which it can never by any possibility serve, it is being taken for a use that is not public, and the owner's constitutional rights call for protection by the courts." 10 C.L. 184, § 159.

"If the use for which property is taken is public, it is immaterial whether the power of eminent domain is to be exercised by a private or by a municipal corporation, or even by the state itself; but in a case in which the questions whether the use is public is close, the courts are inclined to be more liberal if the agency is public." 10 R.C.L. 34, § 30.

Kentucky's highest Court determined nearly 35 years ago that there is sufficient public purpose involved in the government providing off street parking to permit condemnation for a public parking facility. In *Miller* v. *City of Georgetown*, Ky., 191 S. W. 2d 403 (1945) the Court stated:

"Is then the acquisition and use of land by the city for a parking lot a municipal purpose? As said by the court in Nourse v. City of Russellville, 257 Ky. 525, 78 S. W. 2d 761, 764, when speaking of the powers of a municipality: 'The prime function of these units of government is to promote the safety, convenience, comfort, and the common welfare of their citizens by establishing and maintaining those things which tend to do so and by regulating or promoting those things which are harmful.'

"It is a matter of common knowledge that the great increase in recent years of motor vehicles has created a situation, even in the smaller cities, which is fraught with danger to persons using the streets and causes inconvenience to the residents of the city. Under the power to regulate the use of vehicles on their streets,

> cities may, and frequently do, prohibit parking on the streets in congested areas, and we think the right to furnish parking space is a necessary adjunct to the right to regulate traffic, otherwise it would be impossible to achieve the general objectives of the statutory grant of power to regulate the use of streets by vehicles. One of the main objectives is the protection and safety of the citizens. . . .
>
> . . . .
>
> We have no doubt that furnishing a parking lot for automobiles constitutes a legitimate municipal purpose."

It is thus apparent that the power to condemn for a parking facility exists. And it appears that the pedway and the parking garage will be maintained by the Commonwealth for the public, and the fact that Mr. Schneider may indirectly derive some benefit thus becomes irrelevant under the holding of *Sturgill, Supra.*

As for the contention by the defendants that a better site for the parking garage exists, that also is irrelevant under the case law. As stated in *Commonwealth* v. *Burchett,* Ky. 367 S. W. 2d 262 (1963) at p. 266:

> "The judicial power of government should not be invoked against the discretion of an agency of the executive branch in determining what is in the public interest, including what particular property is needed in connection with a valid public project, unless there is such a clear and gross abuse of that discretion as to offend the guaranty of Const. Sec. 2 against the exercise of arbitrary power."

This court can well appreciate the plight of the defendants, as it does with any landowner faced with the imminent

loss of their land, but this court cannot in good conscience state that there has been such a clear and gross abuse of discretion upon the Commonwealth's part as to constitute the exercise of arbitrary power. As this court sees it, the situation amounts to nothing more than Governor Carroll taking an active leadership role in getting the Riverfront project moving, by prevailing upon Al J. Schneider, a developer with a reputation for willingness to take a gamble and success in such ventures, to build at a location vital to giving impetus to the project; and Mr. Schneider making inquiry and seeking assurances as to the intended use of the adjoining property, just as any good businessman would do. And the government also is entitled to the use of good business practice and judgment, as stated in *Com., Dept. of Highways* v. *Trimble*, Ky., 451 S. W. 2d 641 (1969) at p. 644. While the defendant, faced with the loss of its land, understandably looks for and sees through its eyes a surreptitious deal, this court, sees only the exercise of good business judgment. In any event, the proposed parking garage is a legitimate governmental purpose, is to be operated and maintained by the Commonwealth for the use of the general public, and hence the Commonwealth has by virtue of eminent domain the right to acquire the subject property, and the Commonwealth is entitled to immediate possession.

Accordingly the plaintiff's motion for the entry of an Interlocutory Judgment should be sustained and said Judgment signed and entered.

(s) Richard A. Revell
Richard A. Revell, Judge

December 10, 1979

cc: Mr. Dominick G. Calve
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Mr. Louis Cohen
Attorneys for Defendants

Mr. Michael R. Greene
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Mr. William H. Cull
Attorney for Governor Carroll

Mr. Rudy F. Bouteiller
Ms. Louella Person

JEFFERSON CIRCUIT COURT

FOURTH DIVISION

No. 79CI01265

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCE - - - - *Plaintiff*

v.

MORRIS R. YUDOFSKY AND ASSOCIATES
CLIFFORD A. HARROD d/b/a DECANTER BAR
RUDY F. BOUTEILLER
LOUELLA PERSON - - - - - - - *Defendants*

INTERLOCUTORY ORDER AND JUDGMENT —
Entered December 11, 1979

Upon examining the record herein, the Court finds:

(1) That all the parties hereto are before the Court; and that the Defendants have questioned the Plaintiff's right and authority to condemn the land and materials in questions.

(2) That the Plaintiff under the provision of KRS 416.550 - 416.670 is entitled to condemn the lands and materials hereinafter described.

(3) That the Report of Commissioners conforms to the provisions of KRS 416.580.

(4) It is, therefore, ordered and adjudged that the Plaintiff may take possession of said land and materials for the purpose set forth in the Petition upon the payment of the amount awarded by the Commissioners ($75,000.00) to the Defendants or to the Clerk of this Court.

(5) It is further ordered and adjudged that if no exceptions are filed within thirty (30) days from the date of this judgment, Felix J. Sanders, the Master Commissioner of this Court, shall execute a deed conveying the title to the lands and materials as described in the Petition and incorporated herein by reference, to the Plaintiff in conformity with this judgment.

(6) It is further ordered and adjudged that the Plaintiff takes hereby fee simple title to Parcel No. 193.

(7) It is further ordered and adjudged by this Court that the owners of the property herein shall vacate the same and deliver full and complete possession of the property which is the subject of this litigation to the Plaintiff upon the payment of the Commissioners' Award herein to the Clerk of this Court and it is further ordered and the sheriff of the county is authorized and directed to evict said owners upon failure to vacate the property herein on or after the date of the payment of the compensation awarded by said commissioners. Said property owners shall pay all costs of said eviction and for which cost, execution shall issue. All other costs shall be paid by the Plaintiff.

Dated this 10th day of December, 1979.

(s) Richard A. Revell
Judge, Jefferson Circuit Court

JEFFERSON CIRCUIT COURT

FOURTH DIVISION

No. 79CI-01265

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCE - - - - *Plaintiff*

v.

M. R. YUDOFSKY & ASSOCIATES, et al. - - *Defendants*

ORDER — Entered December 17, 1979

Upon motion of Defendant, M. R. Yudofsky & Associates, and the Court being sufficiently advised, it is hereby ordered and adjudged that the "Interlocutory Order and Judgment," entered herein December 11, 1979, is hereby amended and modified as follows:

1) More than one claim for relief is presented in this action within the meaning of *Civil Rule 54.02.*

2) The final order styled, "Interlocutory Order and Judgment," entered herein on December 11, 1979, is a final judgment upon one, but less than all, of the claims for relief presented in this action, and it is hereby determined that said judgment is final and there is no just reason for delay.

3) Paragraph (7) of the "Interlocutory Order and Judgment," entered herein December 11, 1979, is hereby modified and amended in that possession will not be delivered to the Plaintiff until the Defendant has exhausted its constitutional right of appeal.

4) Overruled and deleted by Judge Revell.

Dated: December 17, 1979

(s) Richard A. Revell, Judge

JEFFERSON CIRCUIT COURT

ELEVENTH DIVISION

No.79CI01270

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCE - - - - *Plaintiff*

v.

MORRIS R. YUDOFSKY AND ASSOCIATES
PEOPLES INDUSTRIAL PLAN, INC. - - *Defendants*

INTERLOCUTORY ORDER AND JUDGMENT—
Entered January 21, 1979

Upon examining the record herein, the Court finds:

(1) That all the parties hereto are before the Court; and the Defendants have questioned the right and authority of the Plaintiff to take the lands and materials which is the subject matter of this action.

(2) That the Plaintiff under the provision of KRS 416.550 - 416.670 is entitled to condemn the lands and materials hereinafter described.

(3) That the Report of Commissioners conforms to the provisions of KRS 416.580.

(4) It is, therefore, ordered and adjudged that the Plaintiff may take possession of said land and materials for the purpose set forth in the Petition upon the payment of the amount awarded by the Commissioners ($325,000.00) to the Defendants or to the Clerk of this Court.

(5) It is further ordered and adjudged that if no exceptions are filed within thirty (30) days from the date of this judgment, Felix J. Sanders, the Master Commis-

sioner of this Court, shall execute a deed conveying the title to the lands and materials as described in the Petition and incorporated herein by reference, to the Plaintiff in conformity with this judgment.

(6) It is further ordered and adjudged that the Plaintiff takes hereby fee simple title to Parcel No. 190.

(7) It is further ordered and adjudged by this Court that the owners of the property herein shall vacate the same and deliver full and complete possession of the property which is the subject of this litigation to the Plaintiff upon the payment of the Commissioners' Award herein to the Clerk of this Court and it is further ordered and the sheriff of the county is authorized and directed to evict said owners upon failure to vacate the property herein on or after the date of the payment of the compensation awarded by said commissioners. Said property owners shall pay all costs of said eviction and for which cost, execution shall issue. All other costs shall be paid by the Plaintiff.

Dated this 21st day of Jan., 1980.

(s) R. Stephenson
Judge, Jefferson Circuit Court

JEFFERSON CIRCUIT COURT

ELEVENTH DIVISION

No. 79CI01270

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

MORRIS R. YUDOFSKY & ASSOCIATES - - *Defendant*

ORDER — Entered November 20, 1980

Upon motion of Defendant, Morris R. Yudofsky & Associates, and the Court being sufficiently advised:

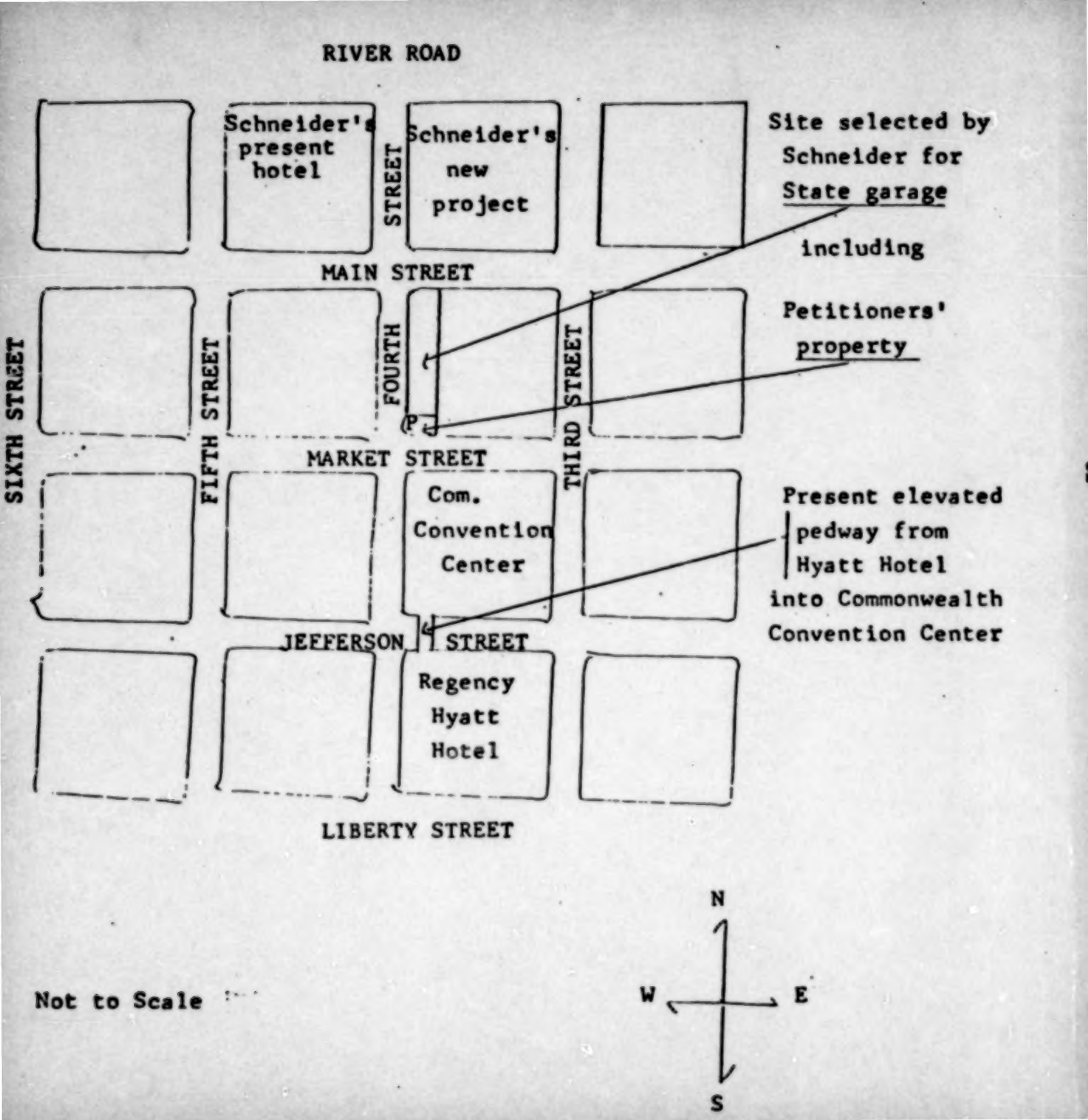
It is hereby ordered and adjudged that the Interlocutory Order entered herein January 21, 1980, is hereby amended and modified as follows:

1. More than one claim for relief is presented in this action within the meaning of Civil Rule 54.02.

2. The final order styled, "Interlocutory Order and Judgment," entered herein on Jauary 21, 1980, is a final judgment upon one, but less than all, of the claims for relief presented in this action, and it is hereby determined that said judgment is final, and there is no just reason for delay.

3. Paragraph (7) of the "Interlocutory Order and Judgment," entered herein January 21, 1980, is hereby modified and amended in that possession will not be delivered to the Plaintiff until the Defendant has exhausted its constitutional right of appeal.

(s) Olga S. Peers, Judge
Date: 11-20-80


RIVER ROAD
Schneider's present hotel
Schneider's new project
STREET
Site selected by Schneider for State garage including
MAIN STREET
Petitioners' property
SIXTH STREET
FIFTH STREET
FOURTH
THIRD STREET
P
MARKET STREET
Com. Convention Center
Present elevated pedway from Hyatt Hotel into Commonwealth Convention Center
JEFFERSON STREET
Regency Hyatt Hotel
LIBERTY STREET
N
W
E
S
Not to Scale